

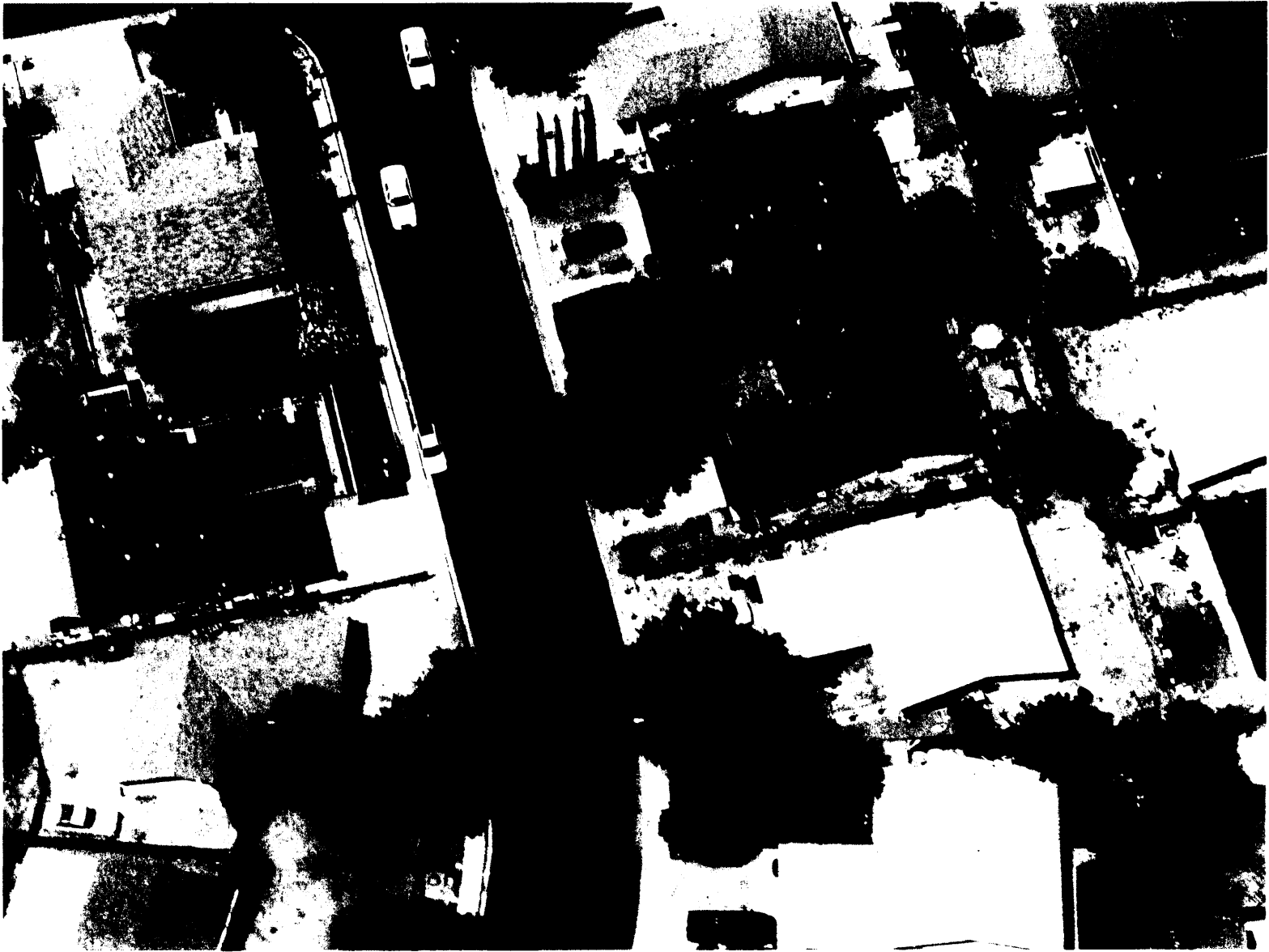
## **EXHIBIT H**

Day v. County of Contra Costa et al  
Case No. 07-4335 PJH

Exh. H - Video of Coned Path of Travel of Decedent  
When He Fled from Deputy Patzer  
(2 plus minutes, viewed with Windows Media Player)







# **EXHIBIT I**

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330

JAMES V. FITZGERALD, III (State Bar No. 55632)  
NOAH G. BLECHMAN (State Bar No. 197167)  
McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
PFALZER, BORGES & BROTHERS LLP  
1211 Newell Avenue  
Post Office Box 5288  
Walnut Creek, CA 94596  
Telephone: (925) 939-5330  
Facsimile: (925) 939-0203  
  
Attorneys for Defendant  
COUNTY OF CONTRA COSTA, JOSHUA PATZER, and  
WARREN RUPF

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAWN DAY, individually and as  
successor in interest to the Estate of Steffen  
Matthew Day,

Plaintiff,

vs.

COUNTY OF CONTRA COSTA;  
JOSHUA PATZER; WARREN RUPF, and  
Does 1 through 50, et al.,

Defendants.

Case No. C07-4335 PJH

**REQUEST FOR ADMISSION**

PROPOUNDING PARTY

Defendant, JOSHUA PATZER

RESPONDING PARTY

Plaintiff, SHAWN DAY

SET NUMBER

One

Defendant, JOSHUA PATZER hereby requests that the Plaintiff, SHAWN DAY, pursuant  
to Federal Rule of Civil Procedure §36, admit under oath the following request for admission:

**REQUEST NO. 1**

Admit that Deputy Patzer's shooting of Decedent Steffen Day was objectively  
reasonable within the meaning of Graham v. Connor.

REQUEST FOR ADMISSION

1 Dated: February 7, 2008

2 McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
3 PFALZER, BORGES & BROTHERS LLP

4 By: 

5 James V. Fitzgerald, III

6 Noah G. Blechman

7 Attorneys for Defendant

8 COUNTY OF CONTRA COSTA, JOSHUA PATZER,  
9 and WARREN RUPF

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McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330



PROOF OF SERVICE BY MAIL (C.C.P. §§ 1013a, 2015.5)

I hereby declare that I am a citizen of the United States, am over the age of eighteen years, and not a party to the within action; my business address is 1211 Newell Avenue, Walnut Creek, California 94596.

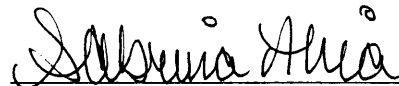
On this date I served the foregoing **REQUEST FOR ADMISSION** on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope addressed as listed below for mailing. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid, in the United States Post Office mail box at Walnut Creek, California, addressed as follows:

**Attorneys For Plaintiff:**

Larry E. Cook, Esq.  
Casper, Meadows, Schwartz & Cook  
2121 N. California Blvd., Suite 1020  
Walnut Creek, CA 94596

Phone: 925-947-1147  
Fax: 925-947-1131

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 7, 2008 at Walnut Creek, California.

  
SABRINA AHIA

1 Andrew C. Schwartz (State Bar No. 64578)  
Larry E. Cook (122776)  
2 **CASPER, MEADOWS, SCHWARTZ & COOK**  
A Professional Corporation  
3 California Plaza  
2121 North California Blvd., Suite 1020  
4 Walnut Creek, California 94596  
Telephone: (925) 947-1147  
5 Facsimile: (925) 947-1131

6 Attorneys for Plaintiff  
SHAWN DAY

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 SHAWN DAY, individually and as successor in  
interest to the Estate of Steffen Matthew Day,

12 Plaintiff,

13 vs.  
14

15 COUNTY OF CONTRA COSTA, JOSHUA  
PATZER, WARREN RUPF, and Does 1  
through 50, et al.,

16 Defendants.  
17

Case No. C07-4335-PJH

**PLAINTIFF'S RESPONSE TO DEFENDANT  
PATZER'S REQUEST FOR ADMISSION,  
SET ONE**

18 PROPOUNDING PARTY: Defendant, JOSHUA PATZER

19 RESPONDING PARTY: Plaintiff, SHAWN DAY

20 SET NUMBER: ONE

21 TO DEFENDANT SHAWN DAY, AND HIS ATTORNEYS OF RECORD:

22 Responding party herein provides the following responses and/or objections to the  
23 above referenced set of Interrogatories:

24 **Preliminary Statement**

25 These responses are made solely for the purposes of this action. Each response is  
26 made subject to all appropriate objections which would require the exclusion of such response  
27 if it were asked of and given by a witness present and testifying in court. All such objections  
28 are reserved and may be interposed at the time of trial.

*Shawn Day v. County of Contra Costa, et al.*

Plaintiff's Response To Defendant Patzer's Request For Admission

Page 1

1 Responding party herein has not yet completed investigation of the facts and  
 2 documents relating to this action, discovery in this action, or preparation for trial.  
 3 Consequently, these responses are given without prejudice to the right of this responding  
 4 party to produce at time of trial any and all subsequently-discovered evidence relating to the  
 5 proof of presently known material facts and to produce all evidence, whenever discovered,  
 6 relating to the proof of subsequently discovered material facts. Responding party reserves  
 7 the right to amend these answers as further facts are obtained.

8 Except for explicit facts admitted herein, no admissions of any nature whatsoever are  
 9 implied or should be inferred. The fact that any interrogatory herein has been answered  
 10 should not be taken as an admission or acceptance of the existence of any fact(s) set forth or  
 11 assumed by such interrogatory, or that such answer constitutes admissible evidence.

12 It is assumed by responding party herein that the propounding party possesses, and is  
 13 familiar with, the entire product of pleading and discovery in this action. Therefore, where an  
 14 interrogatory calls for information which is contained in material that is available to all parties,  
 15 said interrogatory will be answered only by reference to those materials. Further, the  
 16 responses to these interrogatories are given without prejudice to plaintiff's right to produce  
 17 facts, witnesses and documents omitted from these responses by oversight, inadvertence and  
 18 good faith, error or mistake.

19 This preliminary statement is, by this reference, incorporated into each and every  
 20 response hereto.


21 **REQUEST NO. 1:**

22 Admit that Deputy Patzer's shooting of Decedent Steffen Day was objectively  
 23 reasonable within the meaning of Graham v. Connor.

24 **RESPONSE:**

25 Deny.

26  
 27 Dated: March 27, 2008



Larry E. Cook  
 CASPER, MEADOWS, SCHWARTZ & COOK  
 Attorneys for Plaintiff

28  
Shawn Day v. County of Contra Costa, et al.

Plaintiff's Response To Defendant Patzer's Request For Admission

**VERIFICATION TO FOLLOW UNDER SEPARATE  
COVER**

PROOF OF SERVICE

RE: Shawn Day, et al. v. County of Contra Costa, et al.  
United States District Court Case No. C07-4335-PJH

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is 2121 North California Blvd., Suite 1020, Walnut Creek, CA 94596. On the date below, I served the following documents in the manner indicated on the below-named parties and/or counsel of record:

PLAINTIFF'S RESPONSE TO DEFENDANT PATZER'S REQUEST FOR ADMISSIONS, SET ONE

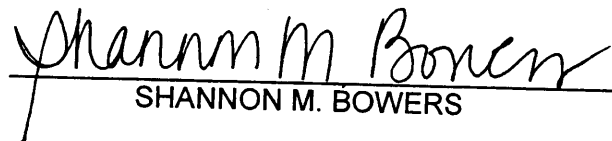
- ☐ U.S. MAIL, with First Class postage prepaid and deposited in sealed envelopes at Walnut Creek, California.
- ☐ ELECTRONICALLY, I caused said documents to be transmitted using ECF as specified by General Order No. 45 to the following parties.
- ☐ FACSIMILE TRANSMISSION from (925) 947-1131 during normal business hours, complete and without error on the date indicated below, as evidenced by the report issued by the transmitting facsimile machine.
- ☒ Hand-Delivery Via Courier
- ☐ Other: OVERNIGHT DELIVERY. On the date indicated below, I placed a true and correct copy of the aforementioned document(s) in a sealed envelope and/or package designated by **Federal Express Priority Overnight**, individually addressed to the parties indicated below, with fees fully prepaid, and caused each such envelope and/or package to be deposited for pick-up on the same day by an authorized representative of **Federal Express** at Walnut Creek, California, in the ordinary course of business.

For Defendants

James V. Fitzgerald, III  
McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer LLP  
1211 Newell Avenue  
Walnut Creek, CA 94596  
Tel: (925) 939-5330  
Fax: (925) 939-0203

I declare under penalty of perjury under the laws of the State of California, and the United States of America, that the foregoing is true and correct and that I am readily familiar with this firm's practice for collection and processing of documents for mailing with the U.S. Postal Service.

Dated: March 27, 2008

  
SHANNON M. BOWERS

## **EXHIBIT J**

1 Andrew C. Schwartz (State Bar No. 64578)  
Larry E. Cook (122776)  
2 **CASPER, MEADOWS, SCHWARTZ & COOK**  
A Professional Corporation  
3 California Plaza  
2121 North California Blvd., Suite 1020  
4 Walnut Creek, California 94596  
Telephone: (925) 947-1147  
5 Facsimile: (925) 947-1131

6 Attorneys for Plaintiff  
SHAWN DAY  
7

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA

11 SHAWN DAY, individually and as successor in  
interest to the Estate of Steffen Matthew Day,

12 Plaintiff,

13 vs.  
14

COUNTY OF CONTRA COSTA, JOSHUA  
15 PATZER, WARREN RUPF, and Does 1  
through 50, et al.,

16 Defendants.  
17

Case No. C07-4335-PJH

**PLAINTIFF'S SUPPLEMENTAL RESPONSE  
TO DEFENDANT PATZER'S SPECIAL  
INTERROGATOIRES, SET ONE**

18 PROPOUNDING PARTY: Defendant, JOSHUA PATZER

19 RESPONDING PARTY: Plaintiff, SHAWN DAY

20 SET NUMBER: ONE

21 TO DEFENDANT SHAWN DAY, AND HIS ATTORNEYS OF RECORD:

22 Responding party herein provides the following responses and/or objections to the  
23 above referenced set of Interrogatories:

24 **Preliminary Statement**

25 These responses are made solely for the purposes of this action. Each response is  
26 made subject to all appropriate objections which would require the exclusion of such response  
27 if it were asked of and given by a witness present and testifying in court. All such objections  
28 are reserved and may be interposed at the time of trial.

1 Responding party herein has not yet completed investigation of the facts and  
 2 documents relating to this action, discovery in this action, or preparation for trial.  
 3 Consequently, these responses are given without prejudice to the right of this responding  
 4 party to produce at time of trial any and all subsequently-discovered evidence relating to the  
 5 proof of presently known material facts and to produce all evidence, whenever discovered,  
 6 relating to the proof of subsequently discovered material facts. Responding party reserves  
 7 the right to amend these answers as further facts are obtained.

8 Except for explicit facts admitted herein, no admissions of any nature whatsoever are  
 9 implied or should be inferred. The fact that any interrogatory herein has been answered  
 10 should not be taken as an admission or acceptance of the existence of any fact(s) set forth or  
 11 assumed by such interrogatory, or that such answer constitutes admissible evidence.

12 It is assumed by responding party herein that the propounding party possesses, and is  
 13 familiar with, the entire product of pleading and discovery in this action. Therefore, where an  
 14 interrogatory calls for information which is contained in material that is available to all parties,  
 15 said interrogatory will be answered only by reference to those materials. Further, the  
 16 responses to these interrogatories are given without prejudice to plaintiff's right to produce  
 17 facts, witnesses and documents omitted from these responses by oversight, inadvertence and  
 18 good faith, error or mistake.

19 This preliminary statement is, by this reference, incorporated into each and every  
 20 response hereto.

21 **INTERROGATORY NO. 1:**

22 If your response to Request for Admission No. 1 served with these interrogatories is  
 23 anything but an unqualified admission, state all facts upon you base your response.

24 **RESPONSE:**

25 Objection. This interrogatory is premature. Discovery is just beginning in this case.  
 26 No depositions have yet been taken. Defendant has not provided plaintiff with all discovery  
 27 including, but not limited to, audio recordings of witnesses interviews.

28 Without waiving said objection, plaintiff responds as follows:



1                   FACTS:

2                   1.       Defendant Patzer was a much larger man than the defendant as  
3                   evidenced by records produced by defendant.

4                   2.       Defendant Patzer did not use or reasonably attempt to use less than  
5                   lethal force to arrest the decedent.

6                   3.       Defendant made conflicting statements as to whether or not the  
7                   decedent attempted to take control of his weapon.

8                   4.       Decedent was unarmed.

9                   5.       No evidence that Patzer knew that decedent was under the influence of  
10                  a drug.

11                  6.       No evidence that Patzer believed the decedent was a violent person or  
12                  had committed prior acts of violence.

13                  7.       The short time between Patzer giving chase to decedent and the time of  
14                  the shooting indicates no time sufficient for the kind of physical altercation between decedent  
15                  and Patzer as claimed by Patzer.

16                  8.       Neighbors did not see or hear any fights between Patzer and the  
17                  decedent.

18                  **INTERROGATORY NO. 2:**

19                  If your response to Request for Admission No. 1 served with these interrogatories is  
20                  anything but an unqualified admission, state the names, addresses and telephone numbers of  
21                  all persons who have knowledge of each fact identified in your response to Interrogatory No.

22                  1.

23                  **RESPONSE:**

24                  All witnesses are identified in the police reports and in the transcript of the Coroners'  
25                  Inquest provided by defendant to plaintiff.

26                  **INTERROGATORY NO. 3:**

27                  If your response to Request for Admission No. 1 served with these interrogatories is  
28                  anything but an unqualified admission, identify all documents and tangible things that support

1 each fact identified in Interrogatory No. 1 and state the name, address and telephone number  
2 of the person who has each document or thing.

3 **RESPONSE:**

4 All witnesses are identified in the police reports and in the transcript of the Coroners'  
5 Inquest provided by defendant to plaintiff.

6 **INTERROGATORY NO. 4:**

7 Identify each document which supports the damages allegations in Paragraph 23 of  
8 your Complaint.

9 **RESPONSE:**

10 Plaintiff in not in possession of documents responsive to this request.

11 **INTERROGATORY NO. 5:**

12 Identify each and every witness to the damages allegations in Paragraph 23 of your  
13 Complaint.

14 **RESPONSE:**

15 Plaintiff, Shawn Day is the sole witness to his loss.

16 **INTERROGATORY NO. 6:**

17 With regard to your claims against Defendants, for each month since the date of the  
18 incident on August 14-15, 2006, state the name, hourly rate and number of hours spend by  
19 each attorney, law clerk, or paralegal who has worked on your case through the date of your  
20 Answers to these Special Interrogatories, Set one.

21 **RESPONSE:**

22 Plaintiff objects to this interrogatory as it calls for attorney-client work product  
23 privileged information. Notwithstanding this objection, plaintiff responds as follows:

24 Andrew C. Schwartz: \$500 per hour x 35 hours = \$17,500.00

25 Larry E. Cook: \$400 per hour x 95 hours = \$38,000.00

26 Liza Eto: 10.2 per hour x 80 hours = \$ 816.00

27 Costs: \$10,110.60

28 TOTAL: \$66,426.60

1 **INTERROGATORY NO. 7:**

2 What is the total amount of attorneys' fees and costs incurred on your case through  
3 the date of your Answers to these Special Interrogatories, Set One.

4 **RESPONSE:**

5 Plaintiff objects to this interrogatory as it calls for attorney-client work product  
6 privileged information. Notwithstanding this objection, plaintiff responds as follows:

7 TOTAL: \$66,426.60

8  
9 **INTERROGATORY NO. 8:**

10 Explain how you calculated the number you provided in your Answer to Interrogatory  
11 No. 7 above.

12 **RESPONSE:**

13 Plaintiff objects to this interrogatory as it calls for attorney-client work product  
14 privileged information. Notwithstanding this objection, plaintiff responds as follows: I have a  
15 contingency fee agreement; also, attorneys have agreed to accept such fees as are ordered  
16 by the Court after trial. The fees are as calculated above in Response to Special Interrogatory  
17 No. 6.

18  
19  
20 Dated: April 24, 2008

  
Larry E. Cook  
CASPER, MEADOWS, SCHWARTZ & COOK  
Attorneys for Plaintiff

VERIFICATION TO FOLLOW UNDER SEPARATE  
COVER

## PROOF OF SERVICE

RE: **Shawn Day, et al. v. County of Contra Costa, et al.**  
**United States District Court Case No. C07-4335-PJH**

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is 2121 North California Blvd., Suite 1020, Walnut Creek, CA 94596. On the date below, I served the following documents in the manner indicated on the below-named parties and/or counsel of record:

**PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFEENDANT PATZER'S SPECIAL INTERROGATORIES, SET ONE**

- ☐ **U.S. MAIL**, with First Class postage prepaid and deposited in sealed envelopes at Walnut Creek, California.
- ☐ **ELECTRONICALLY**, I caused said documents to be transmitted using ECF as specified by General Order No. 45 to the following parties.
- ☐ **FACSIMILE TRANSMISSION** from (925) 947-1131 during normal business hours, complete and without error on the date indicated below, as evidenced by the report issued by the transmitting facsimile machine.
- ☒ **Hand-Delivery Via Courier**
- ☐ **Other: OVERNIGHT DELIVERY.** On the date indicated below, I placed a true and correct copy of the aforementioned document(s) in a sealed envelope and/or package designated by **Federal Express Priority Overnight**, individually addressed to the parties indicated below, with fees fully prepaid, and caused each such envelope and/or package to be deposited for pick-up on the same day by an authorized representative of **Federal Express** at Walnut Creek, California, in the ordinary course of business.

**For Defendants**

James V. Fitzgerald, III  
 McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer LLP  
 1211 Newell Avenue  
 Walnut Creek, CA 94596  
 Tel: (925) 939-5330  
 Fax: (925) 939-0203

I declare under penalty of perjury under the laws of the State of California, and the United States of America, that the foregoing is true and correct and that I am readily familiar with this firm's practice for collection and processing of documents for mailing with the U.S. Postal Service.

Dated: April 25, 2008

  
 SHANNON M. BOWERS

PROOF OF SERVICE BY MAIL (C.C.P. §§ 1013a, 2015.5)

I hereby declare that I am a citizen of the United States, am over the age of eighteen years, and not a party to the within action; my business address is 1211 Newell Avenue, Walnut Creek, California 94596.

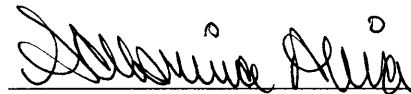
On this date I served the foregoing **DECLARATION OF JAMES V. FITZGERALD, III, IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT/ SUMMARY ADJUDICATION** on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope addressed as listed below for mailing. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid, in the United States Post Office mail box at Walnut Creek, California, addressed as follows:

**Attorneys For Plaintiff:**

Larry E. Cook, Esq.  
Casper, Meadows, Schwartz & Cook  
2121 N. California Blvd., Suite 1020  
Walnut Creek, CA 94596

Phone: 925-947-1147  
Fax: 925-947-1131

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 5, 2008 at Walnut Creek, California.



SABRINA AHIA